

### **REMARKS**

This is a full and timely response to the non-final Office Action of September 9, 2003. By the present Amendment, the claims have been amended to more particularly and distinctly point out the novelty and non-obviousness of the present invention. Reconsideration and allowance of the application and all presently pending claims are respectfully requested.

Upon entry of this Amendment, claims 1-22 and 24-38 remain pending in this application. Claims 1, 21, 22, 37 and 38 have been directly amended herein, and claim 23 has been canceled. These claims point out the novel and non-obvious facilitation and fulfillment of wireless e-commerce transactions disclosed by the present invention. It is believed that the foregoing amendments and additions add no new matter to the present application.

As described in the specification for the present application, the present invention provides a system and method for enabling the facilitation and fulfillment of wireless e-commerce transactions in a secure and convenient manner. The present invention further facilitates the user's mobility by allowing the user to display a transaction code on the user's wireless communications device and thereby bypass traditional physical world limitations associated with transaction processing. For instance, in the movie ticket example described in the specification of the present application, a user is able to bypass a ticket point-of-sale location and proceed directly into the theater using a wireless communications device displaying an appropriate transaction code. The displayed code from the wireless device is scanned by a code scanner associated with the movie theater, and the code scanner is not connected or integrated with the user's wireless device.

Initiation and fulfillment of a transaction is thereby facilitated by the present invention using the displayed code on the wireless device and an appropriate optical scanner, which is detached from and not integrated with the wireless device. Thus, the invention provides a system and method that truly facilitates wireless e-commerce transactions.

#### **Response to §112 rejections**

The Examiner has rejected claims 23, 37 and 38 under 35 USC §112 as being improper single means claims. By the present amendment, claim 23 has been canceled, and claims 37 and 38 have been amended to overcome the §112 rejection, specifically overcoming the “single means claim” rejection. It is believed that the claims as amended are in full compliance with 35 USC §112.

#### **Response to §102 and §103 rejections**

The Examiner has rejected claims 1-6, 10-21, 23-28 and 33-38 under 35 USC §102(e) as being anticipated by Melick et al., and has rejected claims 7-9, 22, and 29-32 under 35 USC §103(a) as being unpatentable over Melick et al. in view of Pitroda. On the basis of the foregoing amendments and the remarks that follow, Applicant submits that these rejections have been traversed.

For a U.S. application publication cited under 35 USC §102(e), the application has a prior art date as of the earliest effective U.S. filing date, only so long as the subject matter used to make the rejection is appropriately supported in the earlier filed application's disclosure and any intermediate application(s). *Examination Guidelines for 35 U.S.C. § 102(e), as amended by the American Inventors Protection Act of 1999, and further amended by the Intellectual Property*

*and High Technology Technical Amendments Act of 2002, and 35 U.S.C. § 102(g) (Revised).*

Thus, in order to properly rely upon the Melick et al. publication, supporting subject matter must be present in the first two provisional applications relied upon by Melick et al. for priority (U.S. 60/174,220 filed Jan. 3, 2000 and U.S. 60/213,843 filed June 23, 2000), as these are the only applications with a priority date which predates Applicant's priority filing date of July 13, 2000.

Bearing this in mind, Applicant submits that the Melick et al. reference neither anticipates nor obviates the present invention as presently claimed. The Melick et al. reference describes providing devices with a bar code scanner to read bar codes from a video display, thereby purportedly simplifying data interchange across computer systems and decreasing reliance on middleware. Specifically, the Melick et al. reference describes how each device can be outfitted with a *connected or integrated* barcode reader to facilitate reading and interpreting the bar code at the *local* computer or device. Contrary to the invention as presently claimed, Melick et al. is not concerned with scanning transaction codes from a *wireless communications device display* using a *detached and non-integrated scanning device or system*. In fact, wireless devices are only referred to in Melick et al. as host devices for scanning, displaying and manipulating the scanned information (see Examiner's citations for wireless communications device). As such, Melick et al. only proposes using wireless devices to provide mobility to the *scanner*, not mobility to a *wireless device* displaying a transaction code.

While the description associated with Fig. 1 in the Melick et al. publication describes a "stand-alone" bar code reader (0035-0038), there is no teaching or suggestion of using the stand-alone bar code reader to read a transaction code from a display of a wireless device. Further, this

material or any similar material is clearly absent from the two earliest provisional applications relied upon for priority in Melick et al. (U.S. 60/174,220 filed Jan. 3, 2000 and U.S. 60/213,843 filed June 23, 2000). It is therefore Applicant's position that the Melick et al. reference cited by the Examiner does not anticipate the claims as amended.

In addition to the above, the Melick et al. reference does not make obvious the invention as presently claimed, either alone or in combination with any of the remaining references of record. For a claim to be properly rejected under 35 USC §103, the combined teachings of the prior art references must suggest all features of the claimed invention to one of ordinary skill in the art. See, e.g., *In Re Dow Chemical*, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 USPQ2d 871, 881 (CCPA 1981). In this regard, it is impermissible "simply to engage in a hindsight reconstruction of the claimed invention." *In re Gorman*, 18 USPQ2d 1885 (Fed. Cir. 1991). Applicant submits that, not only would it be improper hindsight to apply the "stand alone" bar code reader description of the Melick publication against the claims as amended, but it would further be improper because such disclosure does not teach or suggest scanning a transaction code from a wireless communications device display by a device or system that is not attached to or integrated with the wireless device.

#### **Response to Provisional Double Patenting Rejections**

Claims 1-38 presently stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over specifically cited claims of co-pending Application Serial No. 09/690,212. Noting that these rejections are provisional, and in light of the present Amendment, Applicant submits that subject claims are patentably distinct

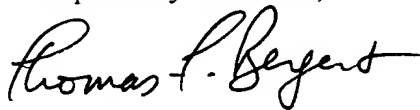
from the cited claims of co-pending Application Serial No. 09/690,212. Applicant therefore respectfully requests that these rejections be withdrawn, once the present application is otherwise in condition for allowance.

### CONCLUSION

Based on the foregoing, Applicant submits that the rejection of the presently pending claims based on the cited references should be withdrawn. Applicant believes that all of the claims currently pending in the present application are now in condition for allowance, and an early notice to that effect is earnestly solicited.

Should there be any outstanding issues requiring discussion that would further the prosecution and allowance of the present application, the Examiner is invited to contact Applicant's undersigned representative at the address and phone number provided below. A one-month extension of time is being filed simultaneously with this Amendment. The Commissioner is hereby authorized to charge Deposit Account No. 50-0766 in payment of the required fees.

Respectfully submitted,



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Attached: Petition for extension of time for 1 month

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